

**REMARKS**

Prior to this amendment, claims 1-17 were pending. By this amendment, claims 1, 16 and 17 have been amended, and new claims 18-24 have been added. According, claims 1-24 are currently pending.

**The Invention**

The claimed invention is directed to a cosmetic composition comprising a thickener, a hydrocarbon having 4 to 7 carbon atoms as propellant, a surfactant and water, wherein the composition is contained in a container under a pressure of at least 0.1 bar in excess of atmospheric pressure and below 3 bar. The claimed composition is expelled from the container by a hydrocarbon propellant having 4 to 7 carbon atoms. Due to the presence of the propellant in the claimed composition, the composition can be dispensed from a container under its own pressure and does not need to be packaged in a “bag in can” type container.

The presence of both the thickener and the hydrocarbon propellant provide for the formation of a highly viscous gel-like composition. Unlike the gel formulation of the prior art, which are either less viscous or which lose viscosity over time, it was unexpectedly found that the claimed composition is very stable upon storage. See example 2 of the specification as filed.

Applicants have broadened the claims so that the claims are now directed to a cosmetic composition containing a hydrocarbon having 4 to 7 carbon atoms as propellant, instead of isopentane as propellant.

The undersigned left voice mail messages for Examiner Retford Berko on February 1 and 4, 2005 to inquire whether the examiner would consider a response directed to claims having broader scope. Examiner Berko left a telephone message for the undersigned on February 5, 2005, and requested that the undersigned contact Examiner James Sphere.

During a telephone discussion with Examiner Sphere on February 9, 2005, he advised applicants to submit the broader claims, and indicated that they should be considered. Accordingly, the response to the Office Action addresses the rejections based on the broader scope of the claims, i.e., cosmetic composition containing a hydrocarbon having 4 to 7 carbon atoms as propellant.

Support for the amendment to claim 1 can be found in the specification as filed, *inter alia*, page 3, lines 13-14.

Support for the amendments to claim 16 can be found in the specification as filed, *inter alia*, page 3, lines 13-14; example 1; original claim 1; and original claim 16.

Support for the amendments to claim 17 can be found in the specification as filed, *inter alia*, page 3, lines 13-14; example 1; original claim 1; and original claim 17.

Support for new claims 18-24 can be found in the specification as filed, *inter alia*, page 3, lines 13-16.

#### Office Action

In the Office Action, the examiner objected to the oath or declaration filed on October 18, 2002. The examiner states that the inventors S. Knebel and T. Withell made non-initialed, non-dated alterations in the oath/declaration. Therefore, the examiner requested a new oath or declaration. The undersigned has requested a new oath or declaration from our European associate. A new oath or declaration will be forwarded to the examiner once it is received.

Claims 16-17 were rejected under 35 U.S.C. §112 and §101 for reciting a use without setting forth any steps in the method. Applicants have amended claims 16 and 17 to include

method steps. Therefore, the rejection under 35 U.S.C. §112 and §101 is now moot and should be withdrawn.

Claims 1-3 and 5-15 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over Lisboa et al. (U.S. Patent No. 5,679,324) in view of Monson et al. (WO 97/20626) further in view of Clark et al. (U.S. Patent No. 4,753,747). The examiner states that Lisboa et al. discloses skin compositions comprising a surfactant, propellant, thickener and cosmetically active ingredients.

However, the examiner refers to Monson et al. as not disclosing isopentane as propellant, a container for the composition, and composition in gel form. Applicants believe that the examiner intended to state that Lisboa et al. does not disclose isopentane as propellant, a container for the composition, and composition in gel form, and not Monson et al.

To rectify the deficiency in Lisboa et al., the examiner cites Monson et al. and Clark et al. According to the examiner, Monson et al. discloses a cosmetic composition under dispensing pressure in a container. The examiner further declares that the composition of Monson et al. contains the ingredients of the claimed invention.

The examiner cites Clark et al. for disclosing the use of gum and glycetyl isostearate admixed with aqueous fatty acid to form a dispersion. Further, according to the examiner, Clark et al. teaches the use of isopentane as propellant and that the composition is under about 80 psi of pressure. The examiner refers to Example 9 of Clark et al.

Therefore, the examiner contends that one in the art would be motivated to prepare a cosmetic propellant composition as claimed by using the ingredients disclosed in the cited art.

Applicants respectfully disagree. Lisboa et al. relates to fragrance compositions which may be packed in a container. The propellant is selected from the group consisting of

fluorocarbon gases, hydrocarbon gases and mixtures thereof. See column 2, lines 41-43. The preferred hydrocarbons disclosed in Lisboa et al. are said to have 1 to 6 carbon atoms. See column 2, lines 49-52.

The example in Lisboa et al. discloses a procedure for preparing the fragrance composition. See column 9, lines 5-42. Here, it is disclosed that the concentrate (e.g., fragrance composition) is then added to an appropriate aerosol container, sealed, and charged with isobutene/propane to form the finished product. See column 2, lines 40-42.

From this disclosure of Lisboa et al., it is readily apparent that the hydrocarbon propellant is outside of the sealed fragrance composition. Therefore, the hydrocarbons are not present in the fragrance composition of Lisboa et al. In contrast to Lisboa et al., the hydrocarbon propellant is present in the cosmetic composition of the claimed invention.

Moreover, there is no disclosure or suggestion in Lisboa et al. that the composition is under a pressure of at least 0.1 bar above atmospheric pressure and below 3 bar, as is required in the claimed invention.

The disclosures of Monson et al. and Clark et al. do not rectify the deficiency of Lisboa et al. Hydrocarbons, such as C<sub>4</sub> to C<sub>6</sub> are mentioned twice in Monson et al. The first context in which hydrocarbons are mentioned in Monson et al. is as a post-forming agent in a foamable composition. See page 9, lines 13 *et seq.*

It is readily apparent from the disclosure on page 10, lines 10 *et seq.* of Monson et al. that the hydrocarbon in the composition of Monson et al. does not function as a propellant. There, it is disclosed that a compressed gas provides the necessary dispensing pressure required to dispense the composition when contained. According to Monson et al., examples of suitable compressed gas include nitrogen, argon, neon, krypton, xenon, helium, carbon dioxide, nitrous

oxide and mixtures thereof. Therefore, the first context in which hydrocarbons are mentioned in Monson et al., function as a post-foaming agent, and not as a propellant.

The second context in which hydrocarbons are mentioned in Monson et al. concerns their use as propellants. See page 12, lines 20-25. Here, it is disclosed that the hydrocarbon is not in the foamable composition. Rather, the hydrocarbon is outside of the foamable composition acting as a dispensing system for preparing the foamable composition of Monson et al. in a container. Thus, hydrocarbons in this context are used as a propellant in a second container to dispense the foamable composition into a first container.

Therefore, C<sub>4</sub> to C<sub>6</sub> hydrocarbons are not present in the foamable composition of Monson et al. as a propellant. Moreover, there is no disclosure or suggestion in Monson et al. of a cosmetic composition containing the claimed C<sub>4</sub> to C<sub>7</sub> hydrocarbons as a propellant in a container under the claimed pressure.

Clark et al. describes a liquid soap neutralization process (see column 6, lines 29 *et seq.*), which is exemplified in example 9. Example 9 describes the manufacture of a post-foaming gel composition. The manufacture process include the mixing of an aqueous fatty acid dispersion under a pressure of from 10-100 psi with a mixture of isopentane and isobutane. The fatty acids in the mixture are then saponified by neutralization, thereby obtaining a soap.

It is disclosed that the C<sub>4</sub>-C<sub>6</sub> hydrocarbons (e.g., isopentane and isobutene) admixed with the fatty acids function as post-foaming agents (see column 6, lines 6-9). Therefore, hydrocarbons in this disclosure of Clark et al. do not function as propellants, as is required in the claimed invention.

C<sub>3</sub>-C<sub>4</sub> hydrocarbons are also mentioned in another context in Clark et al. Column 6, lines 17 *et seq.* discloses that the liquid soap mixture is filled into aerosol, dual compartment,

dispensing containers of the bag or piston-type. From this disclosure of Clark et al., the hydrocarbons are present in one of the compartments of the container.

Therefore, in this context of Clark et al., the hydrocarbons are not present in the liquid soap composition. Rather, the hydrocarbons are outside of the soap composition.

Accordingly, there is no disclosure or suggestion in Lisboa et al., Monson et al., and Clark et al. of a cosmetic composition containing a hydrocarbon having 4 to 7 carbon atoms as propellant in a container under the pressure required in the claimed invention. Therefore, all of the claim limitations are neither taught nor suggested. Thus, the combination of Lisboa et al., Monson et al., and Clark et al. does not result in the claimed invention.

Accordingly, applicants respectfully request that the rejection of claims 1-3 and 5-15 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Claims 1-5 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over Monson et al. (WO 97/20626) in view of Clark et al. (U.S. Patent No. 4,753,747) further in view of Martino et al. (U.S. Patent No. 5,288,493). According to the examiner, neither Monson et al. nor Clark et al. disclose HLB-values. The examiner states that Martino et al. disclose HLB values of less than 10..

As discussed above, neither Monson et al. nor Clark et al. disclose or suggest a cosmetic composition containing a hydrocarbon having 4 to 7 carbon atoms as propellant in a container under the pressure required in the claimed invention. There is no disclosure or suggestion in Martino et al. of a cosmetic composition containing a hydrocarbon having 4 to 7 carbon atoms as propellant in a container under the claimed pressure. Therefore, Martino et al. does not rectify the deficiency of Monson et al. in view of Clark et al.

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Accordingly, applicants respectfully request that the rejection of claims 1-5 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

In view of the above, allowance of the pending claims is earnestly requested. If the examiner has any questions regarding this amendment, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

  
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